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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,307	01/23/2002	Timothy J. Ley	S63.2-8618	7519

490 7590 03/18/2005

VIDAS, ARRETT & STEINKRAUS, P.A.
6109 BLUE CIRCLE DRIVE
SUITE 2000
MINNETONKA, MN 55343-9185

EXAMINER

NGUYEN, VI X

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 03/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/055,307	Applicant(s) LEY ET AL.	
	Examiner Victor X Nguyen	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 2,3,6,7 and 12-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5 and 8-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 5 and 8-11 are rejected under 35 U.S.C. 102 (e) as being anticipated by Berry et al (6,231,598).

Berry et al disclose in figs. 1-3, a stent for securing and anchoring the graft to the wall of the blood vessel having the limitations as recited in claim 1, including: at least one serpentine segment (15), the serpentine segment comprises a plurality of peaks (the top edge of 51,52) and troughs (19,20), and where a plurality of first peaks disposed at a first distance from the longitudinal axis of the stent in the reduced state (fig. 2), where a plurality of second peaks disposed at a second distance from the longitudinal axis of the stent. It is interpreted that the second distance at the curve 29 of fig. 2 is less than the first distance at the curve 18, and where in the expanded state (fig. 3) the first distance is substantially the same as the second distance, and where the first peaks define a cylindrical outer surface (14) of the segment.

Regarding claim 5, Berry et al disclose the peaks (51,52) are equidistant from the longitudinal axis of the stent, and where the troughs (19,20) arranged in a regular alternating pattern about the longitudinal axis (see fig.2).

Regarding claims 8-9, Berry et al disclose the stent comprises a plurality of serpentine segments (fig.2) and where the serpentine segments are adjacent from one another.

Regarding claims 10-11, Berry et al disclose in figs. 1-2, the second peaks define a cylindrical inner surface of the segment, where the cylindrical inner surface of the segment tapers outward toward the cylindrical outer surface of the segment.

Response to Amendment

2. Applicant's arguments with respect to claims 1, 5 and 8-11 have been considered but they are not persuasive. Applicant is asked to please refer to the modified prior art rejection above wherein examiner addresses applicant's concerns regarding prior art rejections.

In response to applicant's request that the withdrawal of independent claim 28 needs to be reconsidered. As the examiner explained in more details on previous Office Action dated 10/8/2004 that claim 28 does describe features shown in figures 9-11 of non-elected species IV. For example, an election of Specie I appears to include at least claims 1, 5 and 8-11 but not claim 28, since the device as shown in Specie I does not appear to have at least a portion of the first segment and at least a portion of the second segment are in overlapping relationship when the stent is in an unexpanded state, and the first and second segments are in a non-overlapping relationship as claimed.

Conclusion

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

Art Unit: 3731

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

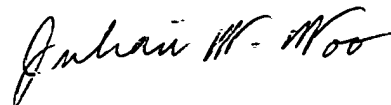
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X Nguyen whose telephone number is (571) 272-4699. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Victor X Nguyen
Examiner
Art Unit 3731

Vn *VN*
3/15/2005



JULIAN W. WOO
PRIMARY EXAMINER